

### 2012 National Defense Authorization Act

Providing for the Common Defense

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# National Defense Authorization Act for Fiscal Year 2012 --- Strengthening the Nation's Terrorist Detention, Interrogation and Prosecution Policies---

The Conference Report to H.R. 1540 strengthens policies and procedures to prosecute, interrogate and detain terrorists. The killing of al-Qaeda chief Osama bin Laden in Pakistan and the threats posed by al-Qaeda cells in Yemen and Africa underscore the evolving and continuing nature of the terrorist threat to the United States. The Conference Report ensures the United States will have the ability to meet this threat and neutralize terrorists from these groups and conduct effective interrogations. In no way do any of these provisions extend any new authorities to detain U.S. citizens. Key provisions below:

#### PROHIBITING THE TRANSFER OR RELEASE OF GUANTANAMO DETAINEES TO OR WITHIN THE

**UNITED STATES.** The National Defense Authorization Act would prohibit the Secretary of Defense from using FY2012 funds to transfer or release certain detainees to or within the United States. This prohibition applies to individuals detained at U.S. Naval Station, Guantanamo Bay, Cuba. This provision is identical to a provision in the FY11 NDAA.

#### PROHIBITING FUNDS FOR FACILITIES TO HOUSE GUANTANAMO DETAINEES IN THE UNITED

**STATES.** The FY12 NDAA would prohibit the Secretary of Defense from using any of the funds available in FY2012 to modify or construct any facility in the United States to house any detainee transferred from U.S. Naval Station, Guantanamo Bay, Cuba for the purposes of detention or imprisonment in the custody or effective control of the Department of Defense.

## REAFFIRMING THE LAWFUL DETENTION OF CERTAIN INDIVIDUALS FROM AL-QAEDA, THE TALIBAN, AND ASSOCIATED FORCES ENGAGED IN ARMED CONFLICT WITH THE UNITED STATES.

The FY12 NDAA would reaffirm the lawful detention of certain individuals, pursuant to the Authorization of Use of Military Force, that are in engaged in the armed conflict with the United States. This provision does not address or extend new authority to detainee U.S. citizens.

**REQUIREMENT FOR MILITARY CUSTODY FOR FOREIGN AL-QAEDA TERRORISTS.** In cases such as the Christmas Day Bomber, where a foreign terrorist is caught in a plot to attack the United States, establishes a new requirement for military custody. This provision only applies to individuals who are part of, or substantially supporting, Al Qaeda or associated forces <u>AND</u> have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners. It is vital that terrorists bent on waging war against American freedom are treated according to the laws of war, not treated like simple criminals.

- -Provides a waiver for the Secretary of Defense when such a requirement is not in the national security interests of the United States.
- -Facilitates greater intelligence gathering from foreign terrorists.
- -Explicitly exempts U.S. citizens from the requirement.

**REQUIRING NATIONAL SECURITY PROTOCOLS GOVERNING DETAINEE COMMUNICATIONS.** Would require the Secretary of Defense to submit to the defense committees a national security protocol

covering governing individuals detained at U.S. Naval Station, Guantanamo Bay, Cuba in order to prevent unauthorized disclosure of classified information.

**REQUIRING THE SECRETARY OF DEFENSE TO ESTABLISH A REVIEW PROCESS TO EVALUATE DETENTIONS AT GUANTANAMO BAY.** Would require the Secretary of Defense to establish a review process to determine whether the continued detention of individuals detained at U.S. Naval Station, Guantanamo Bay, Cuba, is necessary to protect U.S. national security. This legislation would not affect the jurisdiction of any Federal court to determine the legality of detention of any individual detained at Guantanamo Bay.

**PROHIBITING THE TRANSFER OR RELEASE OF CERTAIN DETAINEES TO OR WITHIN FOREIGN COUNTRIES WITHOUT CERTIFICATION FROM THE SECRETARY OF DEFENSE.** Would prohibit the Secretary of Defense from transferring or release individuals detained at U.S. Naval Station, Guantanamo Bay, Cuba, to or within a foreign country. This prohibition applies unless the Secretary of Defense, with the concurrence of the Secretary of State, certifies to Congress that the government of the country to which the individual would be transferred meets certain specific criteria.

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COURTESY OF HOUSE ARMED SERVICES COMMITTEE
CHAIRMAN BUCK MCKEON (R-CA)